

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)	
)	
Wm. A. KNAUS & Richard D. MARKS)	Group Art Unit: 3626
)	
Application No: 09/822,261)	Examiner: Lena A. Najarian
)	
Filed: March 26, 2001)	
)	
Title: BROADBAND COMPUTER-BASED NETWORKED SYSTEMS FOR		
CONTROL AND MANAGEMENT OF MEDICAL RECORDS		

MAIL STOP = APPEAL BRIEF - PATENTS

Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY TO THE NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Sir:

Appellant received a Notification of "Non-Compliant Appeal Brief ("Notification"), mail dated January 24, 2007. According to the Notification, Appellant's Brief is allegedly defective for failure to comply with one or more provisions of 37 CFR 41.37. In particular, two boxes are checked indicating that Appellant's Appeal Brief is lacking certain required elements. Specifically, boxes 1 and 10 are checked. Under box 10 is written that "Applicant's stated status of the claims on page 2 of the Appeal Brief is incorrect. Claims 1-29 and 46-75 are pending. Also, on page 1 of the Appeal Brief, Applicant states that 09/816,152 is the parent of the instant application. It is a co-pending application, not the parent."

With respect to the incorrect statement of the status of claims in the Appeal Brief filed on October 30, 2006, Applicant respectfully submits substitute pages 1 and 2 of the Appeal Brief for rectification of this error, and so that the Appeal Brief will now state that claims 1-29 and 46-75 are pending.

In the Status of Amendments section of the Appeal Brief on page 2, it was also incorrectly stated that "Subsequent to the final Office Action from which this appeal is based,

Appellant canceled claims 62 and 73, and amended claims 1, 10, 11, 20, 25, 65, 68 and 73.” This statement was incorrect, as only claims 1 and 65 were amended in that response, and no claims were canceled. It was also stated that an Advisory Action was mail dated June 26, 2006, when the mail date was in fact June 27, 2006. Both of these errors have not been corrected in the newly-submitted Appeal Brief page 2.

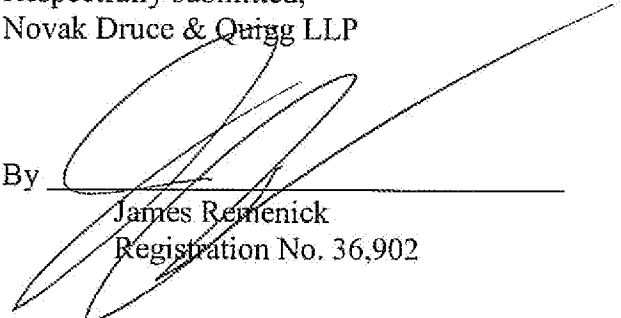
The Notification further asserted that Applicant’s statement that Application 09/816,152 is the parent of the instant application is incorrect. Applicant respectfully disagrees. According to MPEP § 201.04, the term “parent” is applied to an earlier application of an inventor disclosing a given invention, and benefit of the filing date of a co-pending parent application may be claimed under 35 U.S.C. § 120. In a declaration filed on August 25, 2005, benefit to Application No. 09/816,152 was so claimed under 35 U.S.C. § 120. For this reason, Applicant respectfully requests that this basis for non-compliance be withdrawn.

No other amendments have been made to the Appeal Brief other than those described above.

Applicant hereby authorizes the Commissioner to charge the fee for a one month extension of time to the credit card provided. If any additional fees are deemed necessary, please charge our Deposit Account No. 14-1437, referencing Attorney Docket No. 8123.003.US.

Respectfully submitted,
Novak Druce & Quigg LLP

By


James Remenick
Registration No. 36,902

Date: March 8, 2007

Attached: Substitute Appeal Brief
pages 1-2

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APPELLANT'S BRIEF ON APPEAL

Sir:

This Appeal is from the Examiner's Final Rejection of claims 1-29 and 46-75, and the Notice of Panel Decision from Pre-Appeal Brief Review of these same claims.

REAL PARTY IN INTEREST

The real party in interest is Patient Command, Inc., a Delaware corporation with its place of business in McLean, Virginia.

RELATED APPEALS AND INTERFERENCES

To the best of the undersigned's knowledge, there is one other related appeal pending within the meaning of 37 CFR 1.192(c). An Appeal Brief was filed on October 12, 2006, with respect to United States Patent Application No. 09/816,152, which is the parent of the instant application. To the best of the undersigned's knowledge, there is no other related Appeal or Interference within the meaning of 37 CFR 1.192(c).

STATUS OF CLAIMS

Claims 1-59 were originally filed with this application. In a Preliminary Amendment filed and dated July 7, 2004, Appellant amended claims 1, 8, 9, 15, 20, 25, 26, 30, 31, 40, 46, 51-53, 54, 56 and 58. In an Amendment filed and dated February 25, 2004, Appellant canceled claims 30-45, amended claims 1 and 46, and added new claims 60-75. In an Amendment filed and dated April 20, 2005, Appellant canceled claims 63 and 72, and amended claims 1, 10, 11, 20, 25, 65, 68 and 73. In an Amendment filed and dated May 12, 2005, Appellant amended claims 1, 10, 11, 19-21, 23, 25-28, 46, 54, 55, 59, 61, 63-66, 68, 70-73 and 75. In an Amendment filed and dated August 26, 2005, Appellant amended claims 1, 21, 46 and 65. In an Amendment filed and dated June 6, 2006, Appellant amended claims 1 and 65. All these amendments have been entered by the Examiner.

Claims 1-29 and 46-75 are currently pending in the application, and these same claims are before the Board. A copy of these claims is appended hereto.

STATUS OF AMENDMENTS

Subsequent to the final Office Action from which this appeal is based, Appellant amended claims 1 and 65. In an Advisory Action mail dated June 27, 2006, the Examiner checked box 7(b), indicating that, for purposes of this appeal and further prosecution, all amendments would be entered.

SUMMARY OF CLAIMED SUBJECT MATTER

Appellant's claimed invention is directed to a broad-band, computer-based, networked system of medical health records (specification at page 9, lines 10-12). The system comprises a collection of patient-based, as contrasted with hospital-based or institutional-based, electronic medical records that are encrypted, or secured when collected, accessed, input, viewed, integrated and/or transmitted (*Id.* at page 7, lines 4-5 and 16-17, and page 14, lines 21-23). The electronic medical records are obtained from a plurality of sources, such as hospitals, doctors and clinicians, to name a few (*Id.* at page 13, lines 20-21 and page 18, lines 25-27). At least one medical record of the collection possesses the characteristic of non-repudiation, such that the medical information contained is as good or better than exists at the source from which the medical record was obtained (*Id.* at page 17, lines 14-17 and page 21, lines 20-24). The